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Jozef Straus, Anthony Muller, and Charles Abbe

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re JDS UNIPHASE CORPORATION
SECURITIES LITIGATION

This Document Relates To: All Actions

Master File No. C-02-1486 CW (EDL)

**DECLARATION OF RAYMOND M.
HASU IN SUPPORT OF THE JDSU
DEFENDANTS' MOTION FOR
SANCTIONS PURSUANT TO RULE 11
OF THE FEDERAL RULES OF CIVIL
PROCEDURE**

Date: TBD
Time: TBD
Ct rm: 2, 4th Floor
Before: Hon. Claudia Wilken

Trial Date: October 22, 2007

1 I, Raymond M. Hasu, declare as follows:

2 I am an attorney licensed to practice law in the State of California and am admitted to
3 practice before this Court. I am an associate with the law firm of Morrison & Foerster LLP,
4 counsel of record in this action for defendants JDS Uniphase Corporation (“JDSU”), Jozef Straus,
5 Tony Muller, and Charles Abbe. I submit this declaration in support of the JDSU Defendants’
6 Motion for Sanctions Pursuant to Rule 11 of the Federal Rules of Civil Procedure (the “Motion”).
7 I make this declaration based on personal knowledge, except for any items stated on information
8 and belief, which I am informed and believe are true. If called as a witness, I would testify to the
9 facts set forth below.

10 1. The Rule 11 violations by Lead Plaintiff and Lead Counsel described in the
11 Motion significantly affected the scope of this litigation, requiring the JDSU Defendants to incur
12 far greater fees and costs in discovery, motion practice, and at trial than they would otherwise
13 have incurred. Indeed, it is possible that this action would have been terminated far earlier if
14 Plaintiffs had not included unfounded allegations in their complaints, particularly the unfounded
15 allegations attributed to confidential witnesses.

16 2. The JDSU Defendants do not seek compensation for the full amount (or anything
17 close to the full amount) of the fees and costs they were forced to incur as a result of the Rule 11
18 violations. Instead, the JDSU Defendants seek total sanctions in the flat sum of \$150,000. As
19 shown below, that amount is below even the most conservative calculation of the fees and costs
20 resulting from the Rule 11 violations. Nevertheless, the amount is sufficient to serve the purposes
21 of Rule 11 and is thus an appropriate monetary sanction here.

22 **FEES AND COSTS INCURRED IN LITIGATING THE OVERBROAD CLASS PERIOD**
23 **ALLEGED IN THE FIRST AMENDED COMPLAINT**

24 3. The JDSU Defendants seek Rule 11 sanctions against Lead Plaintiff and Lead
25 Counsel for alleging an overbroad Class Period in the First Amended Consolidated Complaint
26 (“FAC”). After the FAC was dismissed, Lead Plaintiff never again pursued the first three months
27 of that Class Period. It would be reasonable to calculate sanctions based on a percentage of the
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1 fees and costs associated with litigating this action between the filing of the FAC and the filing of
2 the Second Amended Consolidated Complaint (“SAC”), as set forth below.

3 4. The FAC was filed on October 11, 2002. The FAC alleged a 731-day Class Period
4 running from July 27, 1999, through July 26, 2001. The Court dismissed the FAC in part on
5 November 3, 2003. Plaintiffs filed the SAC on January 9, 2004. The SAC asserted a Class
6 Period from October 28, 1999, through July 26, 2001, which was 93 days (or approximately 13%)
7 shorter than the FAC’s Class Period.

8 5. I have reviewed the invoices prepared by Morrison & Foerster for fees and costs
9 incurred by the JDSU Defendants in litigating this action between October 11, 2002 (the date that
10 Plaintiffs filed the FAC), and January 9, 2004 (the date that Plaintiffs filed the SAC). Based on
11 that review, I am informed and believe that the JDSU Defendants incurred fees of approximately
12 \$877,814 and costs of approximately \$178,512 during that period. Thirteen percent of those fees
13 and costs amounts to approximately \$114,116 and \$23,207, respectively. Accordingly, the JDSU
14 Defendants are entitled to sanctions in at least the amount of \$137,323 for this violation.

15 **FEES INCURRED IN DEPOSING AND INTERVIEWING CONFIDENTIAL**
16 **WITNESSES CITED IN THE SECOND AMENDED COMPLAINT**

17 6. The JDSU Defendants seek Rule 11 sanctions against Lead Plaintiff and Lead
18 Counsel for alleging in the SAC that demand for JDSU products declined prior to August 2000
19 causing JDSU to begin restructuring the Company. (SAC ¶¶ 12, 80-90, 96-105, 112-40.) The
20 JDSU Defendants request that the Court order sanctions based on a portion of the fees incurred in
21 deposing and interviewing the “Confidential Witnesses” that Lead Plaintiff cited in the SAC as
22 support for these allegations.

23 7. The JDSU Defendants deposed or interviewed the following Confidential
24 Witnesses (“CWs”) that Lead Plaintiff cited in support of the SAC allegations referenced above:
25 Jeffrey Drothler (CW 2), Robert Gallagher (CW 5), Bryan Guckavan (CW 7), Manjeet Ner
26 (CW 9), Ron Blachman (CW 10), Sopheap Khieu (CW 11), Diana Burns (CW 18), Jeff Nguyen
27 (CW 19), Marek Tybor (CW 20), John Lattimer (CW 22), Daniel Welch (CW 23), Janice
28 Namauleg (CW 24), Eric Kelly (CW 25), Patricia Richard-Revette (CW 26), Jodi Blanco

1 (CW 27), Timothy Bakes (CW 29), Patricia Arle (CW 32), Scott Thomas (CW 33), Roy
2 Lawrence (CW 34), Tai Ton (CW 35), Sandra Macika (CW 37), Henry Fan (CW 38), and Bert
3 Ramos (CW 39).

4 8. Set forth below are the fees associated with deposing and interviewing these
5 confidential witnesses. The figures I set forth include *only* fees incurred for time spent *during* the
6 deposition or interview, and *exclude* all related fees, including fees incurred in preparing for the
7 deposition or interview, traveling to and from depositions, and reviewing and analyzing
8 transcripts. In addition, I was unable to determine from Morrison & Foerster's records the precise
9 number of hours associated with the interviews of Bryan Guckavan, Manjeet Ner, Jeff Nguyen,
10 Patricia Richard-Revette, and Henry Fan. Thus, rather than estimate those fees, I have not
11 included them.

12 9. The JDSU Defendants deposed Jeffrey Drothler on December 1, 2006. Based on
13 my review of Morrison & Foerster's invoices to the JDSU Defendants and other case materials, I
14 am informed and believe that the JDSU Defendants incurred fees of approximately \$4,224 for
15 time spent in that deposition.

16 10. The JDSU Defendants deposed Robert Gallagher on August 7, 2006. Based on my
17 review of Morrison & Foerster's invoices to the JDSU Defendants and other case materials, I am
18 informed and believe that the JDSU Defendants incurred fees of approximately \$1,733 for time
19 spent in that deposition.

20 11. The JDSU Defendants interviewed Ron Blachman on January 17, 2006. Based on
21 my review of Morrison & Foerster's invoices to the JDSU Defendants and other case materials, I
22 am informed and believe that the JDSU Defendants incurred fees of approximately \$403 for time
23 spent in conducting that interview.

24 12. The JDSU Defendants interviewed Sopheap Khieu on April 19, 2006. Based on
25 my review of Morrison & Foerster's invoices to the JDSU Defendants and other case materials, I
26 am informed and believe that the JDSU Defendants incurred fees of approximately \$337 for time
27 spent in conducting that interview.

1 13. The JDSU Defendants interviewed Diana Burns on September 21, 2006, and
2 deposed her on November 2, 2006. Based on my review of Morrison & Foerster's invoices to the
3 JDSU Defendants and other case materials, I am informed and believe that the JDSU Defendants
4 incurred total fees of approximately \$2,731 for time spent in conducting that interview and time
5 taking that deposition.

6 14. The JDSU Defendants interviewed Marek Tybor on April 26, 2006, and deposed
7 him on November 16, 2006. Based on my review of Morrison & Foerster's invoices to the JDSU
8 Defendants and other case materials, I am informed and believe that the JDSU Defendants
9 incurred total fees of approximately \$1,460 for time spent in conducting that interview and time
10 taking that deposition.

11 15. The JDSU Defendants deposed John Lattimer on August 9, 2006. Based on my
12 review of Morrison & Foerster's invoices to the JDSU Defendants and other case materials, I am
13 informed and believe that the JDSU Defendants incurred fees of approximately \$1,285 for time
14 spent in that deposition.

15 16. The JDSU Defendants deposed Daniel Welch on November 10, 2006. Based on
16 my review of Morrison & Foerster's invoices to the JDSU Defendants and other case materials, I
17 am informed and believe that the JDSU Defendants incurred fees of approximately \$996 for time
18 spent in that deposition.

19 17. The JDSU Defendants interviewed Janice Namauleg on September 11, 2006.
20 Based on my review of Morrison & Foerster's invoices to the JDSU Defendants and other case
21 materials, I am informed and believe that the JDSU Defendants incurred fees of approximately
22 \$97 for time spent in conducting that interview.

23 18. The JDSU Defendants deposed Eric Kelly on October 6, 2006. Based on my
24 review of Morrison & Foerster's invoices to the JDSU Defendants and other case materials, I am
25 informed and believe that the JDSU Defendants incurred fees of approximately \$1,581 for time
26 spent in that deposition.

27 19. The JDSU Defendants interviewed Jodi Blanco on March 29 and September 18,
28 2006, and deposed her on October 24, 2006. Based on my review of Morrison & Foerster's

1 invoices to the JDSU Defendants and other case materials, I am informed and believe that the
2 JDSU Defendants incurred total fees of approximately \$1,793 for time spent in conducting those
3 interviews and time spent taking that deposition.

4 20. The JDSU Defendants interviewed Timothy Bakes on April 11, 2006. Based on
5 my review of Morrison & Foerster's invoices to the JDSU Defendants and other case materials, I
6 am informed and believe that the JDSU Defendants incurred fees of approximately \$1,196 for
7 time spent in conducting that interview.

8 21. The JDSU Defendants interviewed Patricia Arle on February 27, 2006. Based on
9 my review of Morrison & Foerster's invoices to the JDSU Defendants and other case materials, I
10 am informed and believe that the JDSU Defendants incurred fees of approximately \$718 for time
11 spent in conducting that interview.

12 22. The JDSU Defendants interviewed Scott Thomas on April 17, 2006. Based on my
13 review of Morrison & Foerster's invoices to the JDSU Defendants and other case materials, I am
14 informed and believe that the JDSU Defendants incurred fees of approximately \$399 for time
15 spent in conducting that interview.

16 23. The JDSU Defendants interviewed Roy Lawrence on March 29, 2006, and
17 deposed him on September 11, 2006. Based on my review of Morrison & Foerster's invoices to
18 the JDSU Defendants and other case materials, I am informed and believe that the JDSU
19 Defendants incurred total fees of approximately \$1,913 for time spent in conducting that
20 interview and time spent in taking that deposition.

21 24. The JDSU Defendants interviewed Tai Ton on October 3, 2006. Based on my
22 review of Morrison & Foerster's invoices to the JDSU Defendants and other case materials, I am
23 informed and believe that the JDSU Defendants incurred fees of approximately \$292 for time
24 spent in conducting that interview.

25 25. The JDSU Defendants deposed Sandra Macika on November 3, 2006. Based on
26 my review of Morrison & Foerster's invoices to the JDSU Defendants and other case materials, I
27 am informed and believe that the JDSU Defendants incurred fees of approximately \$5,101 for
28 time spent in that deposition.

1 26. The JDSU Defendants interviewed Bert Ramos on September 21, 2006. Based on
2 my review of Morrison & Foerster's invoices to the JDSU Defendants and other case materials, I
3 am informed and believe that the JDSU Defendants incurred fees of approximately \$235 for time
4 spent in conducting that interview.

5 27. In total, the JDSU Defendants incurred fees of \$26,494 for time in taking the
6 depositions and conducting the interviews described in Paragraphs 9-26. Accordingly, the JDSU
7 Defendants are entitled to sanctions in at least that amount for the above violation of Rule 11.

8 **FEES INCURRED IN OPPOSING THE MOTION TO STRIKE THE JDSU**
9 **DEFENDANTS' ANSWER**

10 28. Based on a review of Morrison & Foerster's invoices, I am unable to determine
11 with precision the fees associated with opposing Lead Plaintiff's Motion to Strike the JDSU
12 Defendants' Answer. Accordingly, the JDSU Defendants do not request a monetary sanction for
13 this Rule 11 violation. The JDSU Defendants request only an order stating that Lead Plaintiff and
14 Lead Counsel violated Rule 11 by filing the motion.

15 **SANCTIONS REQUESTED**

16 29. The JDSU Defendants request total monetary sanctions in the sum of \$150,000.
17 As noted, the requested sanction of \$150,000 does not even come close to compensating the
18 JDSU Defendants fully for the fees and costs resulting from the Rule 11 violations. The
19 requested sanction is below even the most conservative calculation of the fees and costs resulting
20 from the Rule 11 violations. As set forth in Paragraphs 5 and 27 above, those calculations
21 amount to \$163,817.

22 30. The JDSU Defendants also request an order stating that Lead Plaintiff and its
23 attorneys violated Rule 11 by (1) alleging an overly broad Class Period in the FAC, (2) making
24 allegations based on confidential witnesses in the SAC regarding demand and restructuring in
25 2000, and (3) moving to strike portions of the JDSU Defendants' answer.

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct and that this Declaration was executed in San Francisco, California,
3 on this 14th day of December, 2007.

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5 /s/ Raymond M. Hasu
Raymond M. Hasu
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1 I, Jordan Eth, am the ECF User whose ID and password are being used to file the
2 Declaration Of Ray Hasu In Support Of The JDSU Defendants' Motion For Sanctions Pursuant
3 To Rule 11 Of The Federal Rules of Civil Procedure. In compliance with General Order 45,
4 X.B., I hereby attest that Ray Hasu has concurred in this filing.

5 Dated: December 14, 2007

MORRISON & FOERSTER LLP

6 By: /s/ Jordan Eth
7 Jordan Eth

8 Attorneys for the JDSU Defendants
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